

CODE OF THE COUNTY OF YORK

Chapter 23.3

Stormwater Management

CONTENTS

Article I.	IN GENERAL	23.3 - 2
Sec. 23.3-1.	Purpose of chapter.....	23.3 - 2
Sec. 23.3-2.	Definitions.	23.3 - 2
Sec. 23.3-3.	Local stormwater management program.	23.3 - 7
Sec. 23.3-4.	Conflicting requirements.	23.3 - 8
Sec. 23.3-5.	Applicability.	23.3 - 8
Sec. 23.3-6 – 9	Reserved.	23.3 - 9
Article II.	STORMWATER MANAGEMENT PROGRAM PROCEDURES AND REQUIREMENTS	23.3 - 9
Sec. 23.3-10.	Stormwater management program	23.3 - 9
Sec. 23.3-11.	Stormwater management performance standards.	23.3 - 10
Sec. 23.3-12.	Stormwater management plans.	23.3 - 10
Sec. 23.3-13.	Stormwater pollution prevention plan; contents of plans.....	23.3 - 13
Sec. 23.3-14.	Stormwater management plan; contents of plan.	23.3 - 14
Sec. 23.3-15.	Pollution prevention plan; contents of plans.....	23.3 - 15
Sec. 23.3-16.	Requests for exceptions.	23.3 - 16
Sec. 23.3-17.	Modifications to existing stormwater systems.....	23.3 - 16
Sec. 23.3-18.	Sequence of construction and record drawings.....	23.3 - 16
Sec. 23.3-19.	BMP maintenance agreement	23.3 - 17
Sec. 23.3-20.	Monitoring, reports, inspections, and stop work orders	23.3 - 17
Sec. 23.3-21 - 25	Reserved	23.3 - 18
Article III.	VIOLATIONS	23.3 - 18
Sec. 23.3-26.	Hearings on appeals	23.3 - 18
Sec. 23.3-27.	Appeals to Circuit Court	23.3 - 19
Sec. 23.3-28.	Illicit Discharges a Violation	23.3 - 19
Sec. 23.3-29.	Enforcement.....	23.3 - 19
Article IV.	FEES AND SURETY	23.3 - 21
Sec. 23.3-30.	Fees chapter	23.3 - 21
Sec. 23.3-31.	Performance Bond	23.3 - 24

ARTICLE I. IN GENERAL

This chapter is adopted pursuant to § 62.1-44.15:27 of the Code of Virginia to integrate the County of York stormwater management requirements with Chapters 10 and 23.2 of this Code, and York County Code § 24.1-373, into a unified stormwater program, to facilitate the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities into a more convenient and efficient manner for both York County and those responsible for compliance with these programs.

Sec. 23.3-1. Purpose of chapter.

It is the purpose of this chapter to establish minimum stormwater management requirements and controls to protect the quality and quantity of state waters from the potential harm of unmanaged stormwater, including protection from a land disturbing activity causing unreasonable degradation of properties, water quality, stream channels, and other natural resources, to prevent illicit discharges into the storm sewer system, and to establish procedures whereby stormwater requirements related to water quality and quantity shall be administered and enforced.

This chapter seeks to meet these purposes through the following objectives:

1. Require that land development and land conversion activities maintain the post-development runoff characteristics, as nearly as practicable, to the pre-development runoff characteristics in order to reduce flooding, siltation, stream bank erosion, and property damage;
2. Establish minimum design criteria for the protection of properties and aquatic resources downstream from land development and land conversion activities from damages due to increases in volume, velocity, frequency, duration, and peak flow rate of stormwater runoff;
3. Establish minimum design criteria for measures to minimize nonpoint source pollution from stormwater runoff which would otherwise degrade water quality;
4. Administer the Virginia Stormwater Management Program (VSMP) registration statements for plan review, plan approval, inspection and enforcement of applicable General Permits;
5. Ensure compliance with the requirements of any approved Stormwater Pollution Prevention Plan (SWPPP) and approved Stormwater Management Plan requirements, per Virginia Administrative Code 9VAC25-870-54;
6. Establish provisions for the long-term responsibility for and maintenance of stormwater management control devices and other techniques specified to manage the quality and quantity of runoff;
7. Establish certain administrative procedures for the submission, review, approval and disapproval of stormwater plans and the inspection of approved projects; and
8. Establish controls to reduce pollutants to the storm sewer system from illicit discharges to the maximum extent practicable, as required by the county's small municipal separate storm sewer system VSMP discharge permit.

Sec. 23.3-2. Definitions.

For the purpose of this chapter, the following words and terms shall have the meanings stated in this section unless the context clearly indicates otherwise:

Act. The Virginia Stormwater Management Act, § 62.1-44.15:24, et seq., of the Code of Virginia.

Administrator. The director of the county's Department of Environmental and Development Services or his designee.

Agreement in lieu of a stormwater management plan means a contract between the county or other authorized VSMP authority and the owner or permittee that specifies methods that shall be implemented to

comply with the requirements of a VSMP for the construction of a single-family residence; such contract may be executed by the county or other VSMP authority in lieu of a stormwater management plan.

Applicant. Any person submitting an application for a permit or requesting issuance of a permit pursuant to this chapter.

Approved or Approval. Approval by the Administrator unless another authority is specifically named.

Average Land Cover Condition. A measure of the average amount of impervious surfaces within a watershed, assumed to be 16 percent.

Best management practice or BMP means schedules of activities, prohibitions of practices, including both structural and nonstructural practices, maintenance procedures, and other management practices to prevent or reduce the pollution of surface waters and groundwater systems from the impacts of land-disturbing activities.

Chesapeake Bay Preservation Act land-disturbing activity means a land-disturbing activity including clearing, grading, or excavation that results in a land disturbance equal or greater than 2,500 square feet and less than one acre in all areas of the County designated as subject to the regulations adopted pursuant to the Chesapeake Bay Preservation Act, Code of Virginia, § 62.1-44.15:67 et seq. and Chapter 23.2 of this Code.

Clean Water Act or CWA means the federal Clean Water Act (33 U.S.C §1251 et seq.), formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972, Public Law 92-500, as amended by Public Law 95-217, Public Law 95-576, Public Law 96-483, and Public Law 97-117, or any subsequent revisions thereto.

Code of Virginia means the Code of Virginia (1950), as it may be amended from time to time.

Code or County Code. The Code of the County of York, Virginia.

Common plan of development or sale means a contiguous area, including but not limited to a subdivision development, where separate and distinct construction activities may be taking place at different times on different schedules.

Control measure means any best management practice or stormwater facility, or other method used to minimize the discharge of pollutants to state waters.

County. The County of York.

County Administrator. The county administrator for the county, or his designee.

Department means the Virginia Department of Environmental Quality.

Developer. A person who undertakes land disturbance activities.

Development means land disturbance and the resulting landform associated with the construction of residential, commercial, industrial, institutional, recreation, transportation or utility facilities or structures or the clearing of land for non-agricultural or non-silvicultural purposes.

Discharge. To dispose, deposit, spill, pour, inject, dump, leak or place by any means, or that which is disposed, deposited, spilled, poured, injected, dumped, leaked, or placed by any means.

Drainage Easement. A legal right granted by an owner to a grantee allowing the use of private land for stormwater management purposes.

Flooding. A volume of water that is too great to be confined within the banks or walls of the stream, water body or conveyance system and that overflows onto adjacent lands, causing or threatening damage.

General permit means the VSMP General Permit for Discharges of Stormwater from Construction Activities found at Virginia Administrative Code 9VAC25-880, or any subsequent amendment or modification thereto, authorizing a category of discharges under the CWA and the Act within a geographical area of the Commonwealth of Virginia.

Groundwater. All subsurface water, including, but not limited to, that part within the zone of saturation.

Impervious Cover. A surface composed of any material that significantly impedes or prevents natural infiltration of water into soil. Impervious surfaces include, but are not limited to, roofs, buildings, streets, parking areas, and any concrete, asphalt, or compacted gravel surface.

Illicit discharge. Any discharge to the storm sewer system that is not composed entirely of stormwater except the term shall not include the following discharges unless such discharges are identified by the county administrator to cause sewage, industrial wastes or other wastes to be discharged into the storm sewer system:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows or rising groundwater;
- (4) Infiltration of uncontaminated groundwater;
- (5) Public safety activities;
- (6) Pumping of uncontaminated groundwater from potable water sources, foundation drains, irrigation waters, springs or water from crawl spaces or footing drains;
- (7) Air conditioning condensation;
- (8) Lawn watering;
- (9) Individual residential car washing;
- (10) Flows from riparian habitats or wetlands;
- (11) Dechlorinated swimming pool discharges;
- (12) Street washing;
- (13) Any activity authorized by a valid Virginia Pollutant Discharge Elimination System (VPDES) permit, a Virginia Stormwater Management permit (VSMP) or Virginia Pollution Abatement (VPA) permit; or
- (14) Any other water sources not containing sewage, industrial wastes or other wastes.

Industrial Wastes. Liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of any natural resources.

Land disturbance or land-disturbing activity means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, filling or excavation except that the term shall not include those exemptions specified in Section 23.3-5 (e) of this chapter.

Layout means a conceptual drawing sufficient to provide for the specified stormwater management facilities required at the time of approval.

Linear Development Project. A land development project that is linear in nature such as, but not limited to, (i) the construction of electric and telephone utility lines, and natural gas pipelines; (ii) construction of tracks, rights-of-way, bridges, communication facilities and other related structures of a railroad company; and (iii) highway construction projects.

Local Stormwater Management Program or Local Program. A statement of the various methods adopted pursuant to the Act and implemented by the county to manage the runoff from land development projects and to require the control of post-development stormwater runoff rate of flow, water quality, the proper maintenance of stormwater management facilities, and minimum administrative procedures consistent with

this chapter.

Maintenance Agreement. A legally recorded document that acts as a property deed restriction, and which provides for long-term maintenance of storm water management practices.

Minimum Standards. Those Minimum Standards contained within the Erosion and Sediment Control Regulations promulgated by the Virginia Soil and Water Conservation Board, as set out in 9VAC25-840-40 of the Virginia Administrative Code as they may be extended from time to time.

Minor modification means an amendment to an existing General Permit before its expiration not requiring extensive review and evaluation including, but not limited to, changes in United States Environmental Protection Agency (EPA) promulgated test protocols, increasing monitoring frequency requirements, changes in sampling locations, and changes to compliance dates within the overall compliance schedules. A minor general permit modification or amendment does not substantially alter general permit conditions, substantially increase or decrease the amount of surface water impacts, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

MS4 means a municipal separate storm sewer system as defined in Code of Virginia § 62.1-44.15:24.

Nonpoint Source (NPS) Pollution. Pollution from any source other than from any discernible, confined, and discrete conveyances, and shall include, but not be limited to, pollutants from agricultural, silvicultural, mining, construction, subsurface disposal and urban runoff sources.

Nonpoint Source Pollutant Runoff Load or Pollutant Discharge. The average amount of a particular pollutant measured in pounds per year, delivered in a diffuse manner by stormwater runoff.

Operator means the owner or operator of any facility or activity subject to regulation under this chapter.

Other Wastes. Materials that can adversely affect waters of the United States should they be discharged into same including, but not limited to: decayed wood; sawdust; chips; shavings; bark; leaves; lawn clippings; lawn chemicals, except those applied in accordance with manufacturer's recommendations; animal or vegetable matter; pet waste; construction debris; garbage; refuse; ashes; offal; tar; paint; solvents; petroleum products; gasoline; oil waste; antifreeze or other automotive, motor or equipment fluids.

Owner. The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm or corporation in control of a property.

Permit or VSMP Authority Permit. An approval to conduct a land-disturbing activity issued by the Administrator for the initiation of a land-disturbing activity, in accordance with this chapter, and which may only be issued after evidence of general permit coverage has been provided by the Department.

Permittee means the person to whom the VSMP Authority Permit is issued.

Person means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town or other political subdivision of the Commonwealth, any interstate body or any other legal entity.

Post-development means conditions that reasonably may be expected or anticipated to exist after completion of the land development activity on a specific site or tract of land.

Pre-development. Conditions that exist at the time that plans for the land development of a tract of land are approved by the Administrator. Where phased development or plan approval occurs (preliminary grading, roads and utilities, etc.), the existing conditions at the time prior to the first item being approved or permitted shall establish pre-development conditions.

Record Drawing. A drawing of the completed facilities showing actual constructed elevations, dimensions and locations.

Regulations means the Virginia Stormwater Management Program (VSMP) Permit Regulations 9VAC25-870, as they may be amended from time to time.

Runoff or Stormwater Runoff. That portion of precipitation that is discharged across the land surface or through conveyances to one or more waterways.

Sanitary Sewer. A system of conduits that collect and deliver sanitary wastewater to a wastewater treatment or pumping facility.

Sewage. The water-carried human wastes from residences, buildings, industrial establishments or other places, together with such industrial wastes, stormwater or other water as may be present.

Sheet flow. Shallow, unconcentrated and irregular flow down a slope.

Site means the land or water area where any facility or land-disturbing activity is physically located or conducted, including adjacent land used or preserved in connection with the facility or land-disturbing activity. Areas channelward of mean low water shall not be considered part of a site.

State means the Commonwealth of Virginia.

State Board means the Virginia Water Control Board.

State permit means an approval to conduct a land-disturbing activity issued by the State Board in the form of a state stormwater individual permit or coverage issued under a state general permit or an approval issued by the State Board for stormwater discharges from an MS4. Under these state permits, the Commonwealth imposes and enforces requirements pursuant to the federal Clean Water Act and regulations, the Virginia Stormwater Management Act and the Regulations.

State Water Control Law means Chapter 3.1 (§62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia.

State Waters. All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands.

Stop Work Order. An order issued which requires that construction activity on a site be stopped.

Storm Sewer System. See Stormwater System.

Stormwater means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include without limitation stormwater runoff, snow melt runoff, and surface runoff and drainage.

Stormwater or Stormwater Runoff. Flow from rain, snow or other forms of precipitation and the resulting surface runoff and drainage.

Stormwater Management. The use of structural or non-structural practices that are designed to reduce storm water runoff pollutant loads, discharge volumes, and/or peak flow discharge rates.

Stormwater Management Plan or Plan means a document or documents containing material for describing how existing runoff characteristics will be affected by a land development project and methods for complying with the requirements of this chapter.

Stormwater Pollution Prevention Plan or SWPPP means a document that is prepared in accordance with good engineering practices and that identifies potential sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges from the construction site, and otherwise meets the requirements of this chapter. In addition the document shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of, an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan.

Stormwater System or Storm Sewer System. A system of roads, streets, catch basins, curbs, gutters, ditches, pipes, lakes, ponds, channels, storm drains and other facilities located within the county that are designed or used for collecting, storing, or conveying stormwater or through which stormwater is collected, stored, or conveyed.

Subdivision means the same as defined in Section 20.5-5 of this Code.

Total maximum daily load or TMDL means the sum of the individual wasteload allocations for point sources, load allocations for nonpoint sources, natural background loading and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. The TMDL process provides for point versus nonpoint source trade-offs.

Virginia Stormwater Management Act or Act means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

Virginia Stormwater BMP Clearinghouse website means a website maintained by the State that contains detailed design standards and specifications for control measures that may be used in Virginia to comply with the requirements of the Virginia Stormwater Management Act and associated regulations.

Virginia Stormwater Management Program or VSMP means a program approved by the State Board after September 13, 2011, that has been established by the county to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations.

Virginia Stormwater Management Program authority or VSMP authority means an authority approved by the State Board after September 13, 2011, to operate a Virginia Stormwater Management Program or the Department. Once the county has been so approved, then all references herein to a "VSMP authority" shall be to the county.

VWCB means the Virginia Water Control Board.

Watershed. A defined land area drained by a river, stream, drainage ways or system of connecting rivers, streams, or drainage ways such that all surface water within the area flows through a single outlet.

Sec. 23.3-3. Local stormwater management program.

- (a) Pursuant to the Virginia Stormwater Management Law, Title 62.1, Chapter 3.1, Article 2.3 of the Code of Virginia, the county hereby adopts the regulations, references, guidelines, standards and specifications (hereinafter "the Virginia Stormwater Management Law and Regulations") promulgated by the Virginia State Water Control Board, as such may be amended from time to time, for the effective management of stormwater to prevent the unreasonable degradation of properties and other natural resources in the form of water pollution, stream channel erosion, depletion of ground water resources and more frequent localized flooding. The Virginia Stormwater Management Law and Regulations are sometimes referred to hereinafter collectively as "the state program".
- (b) Before adopting regulations that are more stringent than the state program, the county shall give due notice and conduct a public hearing on the proposed or revised regulations. No public hearing shall be required when the county is amending the local program to conform to revisions in the state program.
- (c) The county's director of the Department of Environmental and Development Services, or his designee, is hereby designated as the county's agent, or Administrator, for the purpose of administering and enforcing the terms of this chapter. The Administrator is authorized to make such inspections as may be necessary to ensure compliance with the terms of this chapter, and any conditions of approval for specific projects and is authorized to take such steps as are provided by this chapter, and as may be necessary, to ensure compliance with its terms. The Administrator shall prepare such standards and regulations not inconsistent with this chapter as may be necessary to regulate the design, construction, and maintenance of stormwater systems. The standards and regulations shall be subject to the approval of the county board of supervisors and shall be amended from time to time as conditions warrant.
- (d) The program and regulations provided for in this chapter shall be made available for public inspection at the office of the county's Department of Environmental and Development Services.

Sec. 23.3-4. Conflicting requirements.

- (a) The terms, conditions and provisions of this chapter shall in no way alter, diminish, abrogate, annul, or change the terms, conditions or provisions of any other ordinance of the county or of any other rule or regulation, statute or other provision of law.
- (b) In the case of any conflict between any term, condition or provision of this chapter with any term, condition or provision of any other county ordinance, or any regulation, or statute, the more restrictive term, condition or provision shall prevail.

Sec. 23.3-5. Applicability.

- (a) Except as provided herein, no person may engage in any land-disturbing activity until a VSMP authority permit has been issued by the Administrator in accordance with the provisions of this chapter.
- (b) Without limitation, this chapter shall be applicable to all subdivision, site plan, building permit or land disturbing activity applications. This chapter also applies to land development activities that are smaller than the minimum applicability criteria if such activities are part of a larger common plan of development that meets the applicability criteria, even though multiple separate and distinct land development activities may take place at different times on different schedules. In addition, all plans must also be reviewed by the county to ensure that established water quality standards will be maintained during and after development of the site and that post construction runoff levels are consistent with any local and regional watershed plans. No subdivision or site plan, or application for a building permit or land disturbing activity permit, or plan or permit relating to any land development activity to which this chapter applies, shall be approved unless such plan or application is in full compliance with this chapter.
- (c) After June 30, 2014, a Chesapeake Bay Preservation Area land-disturbing activity shall not require completion of a registration statement or require coverage under the VPDES Permit for Discharges of Stormwater From Construction Activities (VAR10) but shall be subject to the technical criteria specified in 9VAC25-870-51, including erosion and sediment control plan requirements consistent with Virginia Erosion and Sediment Control law and regulations, Chapter 10 of this Code, stormwater management plan requirements set out in section 23.3-12 of this chapter, pollution prevention plan requirements set out in section 23.3-15 of this chapter, technical criteria and administrative requirements for land disturbing activities 23.3-11(a) of this chapter, and the requirements for long-term maintenance set forth in section 23.3-19 of this chapter.
- (d) In addition to the foregoing, the provisions of this chapter shall apply, as applicable, to all modifications to existing stormwater systems and to all illicit discharges.
- (e) The following activities are exempt from the stormwater performance standards unless otherwise required by federal law:
 - (1) Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted under the provisions of Title 45.1 of the Code of Virginia;
 - (2) Clearing of lands specifically for agricultural purposes and the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the State Board in regulations, including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture use as described in Subsection B of § 10.1-1163 of Article 9 of Chapter 11 of Title 10.1 of the Code of Virginia;
 - (3) Construction of single-family residences separately built not part of a larger common plan of

development or sale and not part of a subdivision that disturbs less than 25000 sq. ft. of land area, including additions or modifications to existing single-family detached residential structures;

- (4) Land development projects that disturb less than 2500 square feet of land area; and
- (5) Linear development projects, provided that (i) less than one acre of land will be disturbed per outfall or watershed, (ii) there will be insignificant increases in peak flow rates, and (iii) there are no existing or anticipated flooding or erosion problems downstream of the discharge point.
- (6) Discharges to a sanitary sewer or a combined sewer system;
- (7) Activities under a State or federal reclamation program to return an abandoned property to an agricultural or open land use;
- (8) Routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original construction of the project. The paving of an existing road with a compacted or impervious surface and reestablishment of existing associated ditches and shoulders shall be deemed routine maintenance if performed in accordance with this subsection; and
- (9) Conducting land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the Administrator shall be advised of the disturbance within seven days of commencing the land-disturbing activity and compliance with the administrative requirements of Subsection (a) is required within 30 days of commencing the land-disturbing activity.

Sec. 23.3-6 – 23.3-9. Reserved.

**ARTICLE II. STORMWATER MANAGEMENT PROGRAM PROCEDURES
AND REQUIREMENTS**

Sec. 23.3-10. Stormwater Management Program

- (a) No VSMP authority permit shall be issued by the Administrator, until the following items have been submitted to and approved by the Administrator as prescribed herein:
 - (1) A permit application that includes a general permit registration statement if such statement is required;
 - (2) An erosion and sediment control plan approved in accordance with the York County Erosion and Sediment Control ordinance, Chapter 10 of this Code; and
 - (3) A stormwater management plan that meets the requirements of Section 23.3-14 of this chapter, or an executed agreement in lieu of a stormwater management plan.
- (b) No VSMP authority permit shall be issued until evidence of general permit coverage is obtained.
- (c) No VSMP authority permit shall be issued until the fees required to be paid pursuant to Section 23.3-30, are received, and a reasonable performance bond required pursuant to Section 23.3-31 of this chapter has been submitted.
- (d) No VSMP authority permit shall be issued unless and until the permit application and attendant materials and supporting documentation demonstrate that all land clearing, construction, disturbance, land development and drainage will be done according to the approved permit.

- (e) No grading, building or other local permit shall be issued for a property unless a VSMP authority permit has been issued by the Administrator.

Sec. 23.3-11. Stormwater management performance standards.

- (a) Water quality performance standards: The post-development non-point source pollution runoff load shall not exceed the calculated pre-development load based upon the average land cover condition or the existing site condition. To protect the quality and quantity of state water from the potential harm of unmanaged stormwater runoff resulting from land-disturbing activities, the county hereby adopts the technical criteria for regulated land-disturbing activities set forth in Part II B of the Regulations, as amended, expressly to include 9VAC25-870-63 (water quality design criteria requirements); 9VAC25-870-65 (water quality compliance); 9VAC25-870-66 (water quantity); 9VAC25-870-69 (offsite compliance options); 9VAC25-870-72 (design storms and hydrologic methods); 9VAC25-870-74 (stormwater harvesting); 9VAC25-870-76 (linear development project); and, 9VAC25-870-85 (stormwater management impoundment structures or facilities), which shall apply to all land-disturbing activities regulated pursuant to this chapter, except as expressly set forth in Subsection (b) of this Section.
- (b) Any land-disturbing activity shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C (9VAC25-870-93 et.seq.) technical criteria provided:
 - (1) A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the county to be the equivalent thereof (i) was approved by the county prior to July 1, 2012, (ii) provided a layout as defined in 9VAC25-870-10, (iii) will comply with the Part II C technical criteria of this chapter, and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each pint of discharge, and such that there is no increase in the volume or rate of runoff;
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (c) Local, state, and federal projects shall be considered grandfathered by the VSMP authority and shall be subject to the Part II C technical criteria provided:
 - (1) There has been an obligation of local, state, or federal funding, in whole or in part, prior to July 1, 2012, or the Department has approved a stormwater management plan prior to July 1, 2012.
 - (2) A state permit has not been issued prior to July 1, 2014; and
 - (3) Land disturbance did not commence prior to July 1, 2014.
- (d) Land-disturbing activities grandfathered under subsections (b) and (c) shall remain subject to the Part II C technical criteria for one additional state permit cycle. After such time, portions of the project not under construction shall become subject to any new technical requirements adopted by the State Board.
- (e) In cases where governmental bonding or public debt financing has been issued for a project prior to July 1, 2012, such project shall be subject to the technical requirements Part II C of the Regulations, as adopted by the county in subsection (b) of this section.

Sec. 23.3-12. Stormwater management plans.

- (a) A stormwater management plan (plan) shall be submitted to the county Department of Environmental and Development Services for review and approval concurrent with the submission of applications of site plans, subdivision plans or land disturbing activity permits. Land disturbing

activity permits shall not be issued for the activity until the plan, as required by this chapter, detailing how runoff and associated water quality impacts resulting from the activity will be controlled and managed is approved.

- (b) The standards contained within the Virginia Stormwater Management Act and Regulations are to be used by the applicant when making a submittal under the provisions of this chapter and in the preparation of stormwater management plans. The Administrator, in considering the adequacy of a submitted plan, shall be guided by these same standards, regulations and guidelines. When the standards vary between the publications, the Virginia Stormwater Management Regulations shall take precedence.
- (c) It is the responsibility of an applicant to include in the plan sufficient information for the Administrator to evaluate the environmental characteristics of the affected areas, the potential and predicted impacts of the development and the effectiveness and acceptability of the proposed measures detailed in the plan. Completeness of plan will be determined and applicant notified in writing of determination within 15 days of receipt.
 - (1) If incomplete, applicant must be notified in writing.
 - (2) If determination of completeness is made, 60 days from date of communication is allowed for review.
 - (3) If determination of completeness is not made and communicated within 15 days, plan shall be deemed complete as of date of submission and 60 days from date of submission will be allowed for review.
 - (4) Any plan previously disapproved must be reviewed within 45 days of resubmission.
- (d) All stormwater management plans shall be appropriately sealed and signed by a professional engineer licensed to practice in Virginia certifying that the plan meets all submittal requirements outlined in this chapter and is consistent with good engineering practice.
- (e) Stormwater management plans shall be approved or disapproved according to the following:
 - (1) A maximum of 60 calendar days from the day a complete stormwater management plan is accepted for review will be allowed for the review of the plan. During the 60-day review period, the Administrator shall either approve or disapprove the plan and communicate its decision to the applicant in writing. Approval or denial shall be based on the plan's compliance with the requirements of this chapter.
 - (2) A disapproval of a plan shall contain the reasons for disapproval.
- (f) If a plan meeting all requirements is submitted and no action is taken within appropriate time frame, the plan will be deemed approval.
- (g) A stormwater management plan that is approved for a residential, commercial, or industrial subdivision shall govern the development of the individual parcels, including those parcels developed under subsequent owners;
- (h) An approved plan may be changed by the Administrator when:
 - (1) An inspection reveals that the plan is inadequate to satisfy applicable requirements and an acceptable revised plan is submitted; or
 - (2) The person responsible for carrying out the plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this chapter are agreed to by the Administrator and the person responsible for carrying out the plans.
- (i) In addition to the above standards, the following requirements shall be met for plan submissions:
 - (1) The size, number, format, etc. of the plan shall meet the applicable requirements for site

plan submission in accordance with Chapter 24.1 of this code or for subdivision plan submission in accordance with Chapter 20.5, depending upon whether the stormwater management plan is being submitted as part of a site plan or subdivision plan application.

- (2) Plans shall be prepared to an appropriate engineer's scale and the scale shall be shown on the plan.
- (3) The location and extent of any transitional buffers, infiltration yards, Chesapeake Bay preservation areas, floodplain management areas, wetlands, historic resources management areas, tourist corridor management areas and/or watershed management and protection areas that may be required by the application of Chapters 24.1 (zoning), 23.2 (Chesapeake Bay preservation areas) or 23.1 (wetlands) of this code shall be shown on the plan.
- (4) The location, type, extent, owner's name and recordation information of any existing or proposed landscape, conservation, preservation, drainage, impoundment, utility, ingress/egress or similar easements on the subject property or adjoining the property shall be shown on the plan.
- (5) Hydrologic and hydraulic design calculations for the pre-development and post-development conditions shall be prepared and submitted along with the plan. Such calculations shall include (i) description of the design storm frequency, intensity and duration, (ii) time of concentration, (iii) soil curve numbers or runoff coefficients, (iv) peak runoff rates and total runoff volumes for each watershed area, (v) stormwater routing, (vi) infiltration rates, where applicable, (vii) culvert capacities, (viii) flow velocities, (ix) data on the increase in rate and volume of runoff for the specified design storms, (x) hydraulic grade lines, (xi) inlet sizing, (xii) and documentation of sources for all computation methods and field test results.
- (6) Pre-development and post-development drainage area maps with topography (minimum scale to be one-inch equals 200-feet) which extends a minimum of 500-feet beyond the limits of the proposed development detailing (i) the various drainage basins, (ii) the direction and flow rate of runoff, and (iii) the flow routing for the controlling time of concentration shall be prepared and submitted along with the plan.
- (7) A topographic base plan (minimum scale to be one-inch equals 50 feet) demonstrating positive drainage from each lot or structure shall be prepared and submitted along with the plan. Such plan shall include (i) direction of flow arrows, (ii) elevations of lot corners, center, high points, low points, finished floor, curbing, and other drainage features (iii) locations where proposed grades meet existing grades, (iv) sizing, slope and elevation of culverts and pipes, (v) depth, size, shape and slope of ditches (vi) size, inverts and elevations of receiving channels or systems, and (vii) location, access to, and details of any BMPs. The one-hundred year flood boundary as depicted on the Flood Insurance Rate Map shall be shown on the plan and all proposed development within the floodplain shall meet the requirements of the Floodplain Management Area Overlay District section of Chapter 24.1 of this code.
- (8) The expected average percent impervious cover per lot for subdivisions shall be determined by the applicant based upon such factors as: the size and style of homes; length, width and configuration of the driveways; number and size of decks, pools, sheds and other accessory structures; and other development that can reasonably be expected to occur on the lots. In no case shall the expected average impervious cover per lot be less than is defined by the curve containing the following data points in the form of (average lot size in square feet: minimum expected percent impervious cover): (87120:12), (43560:20), (21780:25), (14505:30), (10890:38) and (5445:65). BMPs shall be sized based upon total impervious cover which is the summation of the actual impervious cover of the streets and other improvements being proposed as part of the subdivision and the expected average percent impervious cover per lot.
- (9) Retention or detention facilities shall be shown on the plan with the following details where applicable (i) a minimum of two cross-sectional views at 90 degrees to each other (one through the outfall) for each basin showing: adequate freeboard, ground water elevation, bottom elevation, normal water surface elevation, water surface elevations for two, ten and

100-year storm, side slopes and top of bank elevations (ii) spillway, (iii) emergency spillway, (iv) outfall structure, (v) forebay, (vi) plantings (vii) impoundment easement, (viii) access for maintenance, and (ix) stock pile areas for future dredging spoils. All details should be drawn to scale and slopes shown as horizontal distance in feet required for one foot change in vertical distance (H:V).

- (10) Geotechnical properties for the hydrologic and structural properties of soils for all stormwater retention and detention facilities shall be described in a soils report and submitted as part of the plan. The submitted report shall follow the criteria in the Handbook and shall include (i) boring depth, (ii) ground water elevation, (iii) sampling frequency, (iv) sample type, and (v) associated laboratory testing with results and conclusions. Soil properties for infiltration facilities shall also conform to the guidance and specification outlined in the Handbook.
- (11) The maintenance requirements for all BMPs proposed on the plans shall be identified on the plans in the form of a maintenance plan. The purpose of the maintenance plan is to ensure the BMPs will continue to function as designed. The maintenance requirements are to be classified as routine or long term. The required frequency of the maintenance is to be given along with any details necessary to explain each requirement, how it is to be performed, expected cost, level of expertise required to perform, etc. The maintenance plan shall identify the owner of the BMPs and the responsible party for carrying out the maintenance plan. For each facility requiring the removal of accumulated sediments, the point at which the removal of sediment must be performed shall be identified in a quantifiable manner. Access for inspections and maintenance activities must be ensured and permanent easements provided as necessary.
- (12) The following standards shall apply to the design and construction of stormwater systems and shall be incorporated into the plans:
 - a. The maximum depth of open channels should not exceed three feet measured from the invert of the ditch to the adjacent proposed ground elevation.
 - b. The minimum longitudinal slope for open channels shall be 0.0050 foot per foot for channels with unpaved bottoms and 0.0025 foot per foot for channels with paved bottoms.
 - c. The minimum longitudinal slope for curb and gutter shall be 0.0030 foot per foot.
 - d. Stormwater systems that utilize a pump or pumps shall not be approved unless the pumping system will be owned and operated by the county.
 - e. Permanent drainage easements are required where the stormwater system is located on private property owned by other than the owner of the stormwater system.
 - f. Permanent impoundment easements are to be provided where the stormwater system is expected to impound waters during a 100-year storm on private property owned by other than the owner of the stormwater system.
 - g. All stormwater runoff shall be conveyed to a stormwater system and shall not be permitted to sheet flow offsite unless otherwise approved.
 - h. Existing drainage patterns must be preserved to the maximum extent practicable. Requests to alter drainage patterns must be made in writing and submitted for approval as part of the drainage plan.
 - i. Wet ponds shall have a minimum depth of water of six-feet.

Sec. 23.3-13. Stormwater Pollution Prevention Plan; Contents of Plans.

- (a) The Stormwater Pollution Prevention Plan (SWPPP) shall include the content specified by Virginia

Administrative Code § 9VAC25-870-54 and must also comply with the requirements and general information set forth in Virginia Administrative Code § 9VAC25-880-70, Section II ("stormwater pollution prevention plan") of the general permit.

- (b) The SWPPP shall be amended by the operator whenever there is a change in design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to state waters which is not addressed by the existing SWPPP.
- (c) A copy of the SWPPP must be maintained by the operator at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site. Operators shall make the SWPPP available for public review in accordance with Section II of the general permit, either electronically or in hard copy.

Sec. 23.3-14. Stormwater Management Plan; Contents of Plan.

- (a) The Stormwater Management Plan, required in § 23.3-12 of this chapter, must apply the stormwater management technical criteria set forth in § 23.3-11 of this chapter to the entire land-disturbing activity, consider all sources of surface runoff and all sources of subsurface and groundwater flows converted to surface runoff, and include the following information:
 - (1) Information on the type and location of stormwater discharges; information on the features to which stormwater is being discharged including surface waters or karst features, if present, and the predevelopment and post-development drainage areas;
 - (2) Contact information including the name, address, and telephone number of the owner and the tax reference number and parcel number of the property or properties affected;
 - (3) A narrative that includes a description of current site conditions and final site conditions;
 - (4) A general description of the proposed stormwater management facilities and the mechanism through which the facilities will be operated and maintained after construction is complete;
 - (5) Information on the proposed stormwater management facilities, including:
 - (i) The type of facilities;
 - (ii) Location, including geographic coordinates;
 - (iii) Acres treated; and
 - (iv) The surface waters or karst features, if present, into which the facility will discharge.
 - (6) Hydrologic and hydraulic computations, including runoff characteristics;
 - (7) Documentation and calculations verifying compliance with the water quality and quantity requirements of § 23.3-11 of this chapter;
 - (8) A map or maps of the site that depicts the topography of the site and includes:
 - (i) All contributing drainage areas;
 - (ii) Existing streams, ponds, culverts, ditches, wetlands, other water bodies, and floodplains;
 - (iii) Soil types, geologic formations if karst features are present in the area, forest cover, and other vegetative areas;
 - (iv) Current land use including existing structures, roads, and locations of known utilities and easements;

- (v) Sufficient information on adjoining parcels to assess the impacts of stormwater from the site on these parcels;
 - (vi) The limits of clearing and grading, and the proposed drainage patterns on the site;
 - (vii) Proposed buildings, roads, parking areas, utilities, and stormwater management facilities; and
 - (viii) Proposed land use with tabulation of the percentage of surface area to be adapted to various uses, including but not limited to planned locations of utilities, roads, and easements.
- (b) If an operator intends to meet the water quality and/or quantity requirements set forth in Section 23.3-11 of this chapter through the use of off-site compliance options, where applicable, then a letter of availability from the off-site provider must be included. Approved off-site options must achieve the necessary nutrient reductions prior to the commencement of the applicant's land-disturbing activity except as otherwise allowed by § 62.1-44.15:35 of the Code of Virginia.
- (c) Elements of the stormwater management plans that include activities regulated under Chapter 4 (§54.1-400 et seq.) of Title 54.1 of the Code of Virginia shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia pursuant to Article 1 (§ 54.1-400 et seq.) of Chapter 4 of Title 54.1 of the Code of Virginia.
- (d) A construction record drawing for permanent stormwater management facilities shall be submitted to the Administrator. The construction record drawing shall be appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan.

Sec. 23.3-15. Pollution Prevention Plan; Contents of Plans.

- (a) Pollution Prevention Plan, required by Virginia Administrative Code §9VAC25-870-56, shall be developed, implemented, and updated as necessary and must detail the design, installation, implementation, and maintenance of effective pollution prevention measures to minimize the discharge of pollutants. At a minimum, such measures must be designed, installed, implemented, and maintained to:
 - (1) Minimize the discharge of pollutants from equipment and vehicle washing, wheel wash water, and other wash waters. Wash waters must be treated in a sediment basin or alternative control that provides equivalent or better treatment prior to discharge;
 - (2) Minimize the exposure of building materials, building products, construction wastes, trash, landscape materials, fertilizers, pesticides, herbicides, detergents, sanitary waste, and other materials present on the site to precipitation and to stormwater; and
 - (3) Minimize the discharge of pollutants from spills and leaks and implement chemical spill and leak prevention and response procedures.
- (b) The pollution prevention plan shall include effective best management practices to prohibit the following discharges:
 - (1) Wastewater from washout of concrete, unless managed by an appropriate control;
 - (2) Wastewater from washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;
 - (3) Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance; and
 - (4) Soaps or solvents used in vehicle and equipment washing.
- (c) Discharges from dewatering activities, including discharges from dewatering of trenches and

excavations, are prohibited unless managed by appropriate controls.

(d) Each plan approved shall be subject to the following conditions:

- (1) The applicant shall comply with all applicable requirements of the approved plan, and shall certify that all land clearing, construction, land development and drainage will be done according to the approved plan.
- (2) The land development project shall be conducted only within the area specified in the approved plan.
- (3) The Administrator shall be allowed, after giving notice to the owner, occupier, or operator of the land development project to conduct periodic inspections of the project.
- (4) The person responsible for implementing the approved plan shall conduct monitoring and submit reports as the county may require to ensure compliance with the approved plan to determine whether the plan provides effective stormwater management.
- (5) No changes may be made to an approved plan without review and written approval of the county.

Sec. 23.3-16. Requests for Exceptions.

- (a) A request for an exception shall be submitted in writing. The Administrator may grant exceptions to the technical requirements of Part II B or Part II C of the Regulations, provided that (i) the exception is the minimum necessary to afford relief, (ii) reasonable and appropriate conditions are imposed so that the intent of the Act, the Regulations, and this chapter are preserved, (iii) granting the exception will not confer any special privileges that are denied in other similar circumstances, and (iv) exception requests are not based upon conditions or circumstances that are self-imposed or self-created. Economic hardship alone is not sufficient reason to grant an exception from the requirements of this chapter.
- (1) Exceptions to the requirement that the land-disturbing activity obtain required VSMP authority permit shall not be given by the Administrator, nor shall the Administrator approve the use of a BMP not found on the Virginia Stormwater BMP Clearinghouse Website, or any other control measure duly approved by the Director.
 - (2) Exceptions to requirements for phosphorus reductions shall not be allowed unless offsite options otherwise permitted pursuant to 9VAC25-870-69 have been considered and found not available.
- (b) Nothing in this section shall preclude an operator from constructing to a more stringent standard at their discretion.

Sec. 23.3-17. Modifications to existing stormwater systems.

- (a) Existing stormwater systems or any part thereof that convey offsite or a combination of onsite and offsite stormwater runoff shall not be altered or relocated except upon the presentation of data, certified by a licensed engineer that the stormwater carrying capacity of such a modified system is equal to or exceeds the existing capacity. It is not the intent of this section to prevent normal maintenance activities from being performed.

Sec. 23.3-18. Sequence of construction and record drawings.

- (a) Unless otherwise approved, in any land development or land development project, any required stormwater system shall be constructed prior to the construction of any required sanitary sewer system.

- (b) Record Drawings are required for all components of the stormwater system. The record drawings shall be appropriately sealed and signed by a licensed professional in adherence to all minimum standards and requirements pertaining to the practice of that profession. The record drawings shall:
 - (1) Be of the same sheet size; format, scale, etc. as the approved stormwater management plans;
 - (2) Show the as-built condition of the stormwater system calling attention to any changes from the approved drawings;
 - (3) Give the actual dimensions of components such as length of pipe, ditch, etc.;
 - (4) Provide elevations for all rims, inverts, channel bottoms, outfalls, pond cross-sections, structures and all other elevation sensitive components of the system; and
 - (5) Contain a certification stating that the stormwater system has been constructed in accordance with the plan and that the system is functioning as designed.
- (c) Prior to the issuance of building permits for above ground structures, preliminary record drawings of the completed stormwater system must be submitted for approval.
- (d) Prior to the completion of the project and prior to the issuance of the "Certificate of Occupancy" for any structure, final record drawings shall be submitted and approved.

Sec. 23.3-19. BMP maintenance agreement.

- (a) The operation and maintenance of all stormwater facilities identified on the plan shall be guaranteed via a stormwater management/BMP maintenance agreement between the developer and the county. The agreement shall be executed prior to the issuance of the land disturbing activity/stormwater VSMP permit.
- (b) The stormwater management/BMP maintenance agreement shall at a minimum:
 - (1) Be submitted to the Administrator for review and approval prior to the approval of the stormwater management plan.
 - (2) Be in a form approved by the county attorney;
 - (3) Reference the approved stormwater management plan;
 - (4) Insure the stormwater management/BMP facilities are constructed in accordance with the approved plans;
 - (5) Be stated to run with the land and insure the developer, its successors and assigns maintain the stormwater management/BMP facilities in good working condition, acceptable to the county, so that they are performing their design functions;
 - (6) Provide for all necessary access for the county and all appropriate governmental authorities to enter upon the property to inspect the stormwater management/BMP facilities in order to assure they are functioning properly;
 - (7) Provide a procedure that in the event the developer, its successors and assigns fail to properly maintain the stormwater management/BMP facilities in good working order allows the county or any appropriate governmental authority to perform any corrective actions necessary and recover the costs of taking such actions from the developer, its successors and assigns, and;
 - (8) Be recorded with the land records of the county.

Sec. 23.3-20. Monitoring, reports, inspections, and stop work orders.

- (a) The Administrator shall inspect the land-disturbing activity during construction for:
 - (1) Compliance with the approved erosion and sediment control plan;
 - (2) Compliance with the approved stormwater management plan;
 - (3) Development, updating, and implementation of a pollution prevention plan; and
 - (4) Development and implementation of any additional control measures necessary to address a TMDL.
- (b) The Administrator may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this chapter.
- (c) In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement or instrument, the Administrator may also enter any establishment or upon any property, public or private, for the purpose of initiating or maintaining appropriate actions which are required by the permit conditions associated with a land-disturbing activity when a permittee, after proper notice, has failed to take acceptable action within the time specified.
- (d) Pursuant to § 62.1-44.15:40 of the Code of Virginia, and subject to the provisions therein protecting certain confidential information, the Administrator may require every VSMP authority permit applicant or permittee, or any such person subject to VSMP authority permit requirements under this chapter, to furnish when requested such application materials, plans, specifications, and other pertinent information as may be necessary to determine the effect of his discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of this chapter.

Post-construction inspections of stormwater management facilities required by the provisions of this chapter shall be conducted by the Administrator pursuant to the County's adopted and State Board approved inspection program, and shall occur, at minimum, at least once every five (5) years except as may otherwise be provided for in this chapter.

Upon determination of a violation of this chapter, the county administrator may, in conjunction with or subsequent to a notice to comply as specified in this chapter, issue an order requiring that all or part of the development activities on the site be stopped until the specified corrective measures have been taken. The stop work order shall be served in the same manner set out in subsection (c), above, for a notice to comply.

Sec. 23.3-21 – 23.3-25. Reserved.

ARTICLE III. VIOLATIONS

Sec. 23.3-26. Hearings on appeals

- (a) Any permit applicant or permittee, or person subject to the requirements of this chapter, aggrieved by any action of the county taken without a formal hearing, or by inaction of the county, may demand in writing a formal hearing by the Chesapeake Bay Board, provided a petition requesting such hearing is filed with the Administrator within 30 days after notice of such action is given by the Administrator.
- (b) The hearings held under this Section shall be conducted by the Chesapeake Bay Board at its next available regular meeting which is at least 20 working days following the filing of notice of appeal with the Administrator. The appealing party may be represented by counsel or other representative, and may call witness for the purpose of testifying or providing evidence.

- (c) A verbatim record of the proceedings of such hearings shall be taken and filed with the clerk for the Chesapeake Bay Board. Depositions may be taken and read as in actions at law.
- (d) The Chesapeake Bay Board shall have power to issue subpoenas and subpoenas duces tecum, and at the request of any party shall issue such subpoenas. The failure of a witness without legal excuse to appear or to testify or to produce documents shall be acted upon by the Chesapeake Bay Board, whose action may include the procurement of an order of enforcement from the circuit court. Witnesses who are subpoenaed shall receive the same fees and reimbursement for mileage as in civil actions, to be paid by the party at whose request the witness was summoned or subpoenaed.
- (e) A nonrefundable processing fee of \$250.00 shall accompany each application for an appeal.

Sec. 23.3-27. Appeals to Circuit Court

Any person, including the county, aggrieved by a decision of the Chesapeake Bay Board made pursuant to section 23.3-26, may seek judicial review of such decision in the Circuit Court for York County provided that a notice of appeal is filed with the Chesapeake Bay Board and the circuit court within 10 days of the date of the decision appealed from. As specified in Code of Virginia § 62.1-44.15:46, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to such appeals. Unless otherwise provided by law, the circuit court shall conduct such review in accordance with the standards established in § 2.2-4027, and the decisions of the circuit court shall be subject to review by the Court of Appeals.

Sec. 23.3-28. Illicit Discharges a Violation

- (a) It shall be a violation to:
 - (1) Discharge, or cause or allow to be discharged, sewage, industrial wastes or other wastes into the storm sewer system, or any component thereof, or onto driveways, sidewalks parking lots or other areas draining to the storm sewer system; or
 - (2) Connect, or cause or allow to be connected, any sanitary sewer connected to the storm sewer system as of the date of adoption of this article; or
 - (3) Throw, place or deposit or cause to be thrown, placed or deposited into the storm sewer system anything that impedes or interferes with the free flow of stormwater therein.

Sec. 23.3-29. Enforcement

- (a) If the Administrator determines that there is a failure to comply with the VSMP authority permit conditions or determines there is an unauthorized discharge, notice shall be served upon the permittee or person responsible for carrying out the permit conditions by any of the following: verbal warnings and inspection reports, notices of corrective action, consent special orders, and notices to comply. Written notices shall be served by registered or certified mail to the address specified in the permit application or by delivery at the site of the development activities to the agent or employee supervising such activities.
 - (1) The notice shall specify the measures needed to comply with the permit conditions and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, a stop work order may be issued in accordance with Subsection (b) or the permit may be revoked by the Administrator.
 - (2) If a permittee fails to comply with a notice issued in accordance with this Section within the time specified, the Administrator may issue an order requiring the owner, permittee, person responsible for carrying out an approved plan, or the person conducting the land-disturbing activities without an approved plan or required permit to cease all land-disturbing activities until the violation of the permit has ceased, or an approved plan and required permits are obtained, and specified corrective measures have been completed.

Such orders shall become effective upon service on the person by certified mail, return receipt requested, sent to his address specified in the land records of the county, or by personal delivery by an agent of the Administrator. However, if the Administrator finds that any such violation is grossly affecting or presents an imminent and substantial danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth or otherwise substantially impacting water quality, it may issue, without advance notice or hearing, an emergency order directing such person to cease immediately all land-disturbing activities on the site and shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order. If a person who has been issued an order is not complying with the terms thereof, the Administrator may institute a proceeding for an injunction, mandamus, or other appropriate remedy in accordance with Subsection 23.3-29(c)

- (b) In addition to any other remedy provided by this chapter, if the Administrator determines that there is a failure to comply with the provisions of this chapter, the Administrator may initiate such informal and/or formal administrative enforcement procedures in a manner that is consistent with the appeals procedure set forth in section 23.3-26.
- (c) Any person violating or failing, neglecting, or refusing to obey any rule, regulation, chapter, order, approved standard or specification, or any permit condition issued by the Administrator may be compelled in a proceeding instituted in the York County circuit court to obey same and to comply therewith by injunction, mandamus or other appropriate remedy.
- (d) Any person who violates any provision of this chapter or who fails, neglects, or refuses to comply with any order of the Administrator, shall be subject to a civil penalty not to exceed \$32,500 for each violation within the discretion of the court. Each day of violation of each requirement shall constitute a separate offense.
 - (1) Violations for which a penalty may be imposed under this subsection shall include but not be limited to the following:
 - (i) No state permit registration;
 - (ii) No SWPPP;
 - (iii) Incomplete SWPPP;
 - (iv) SWPPP not available for review;
 - (v) No approved erosion and sediment control plan;
 - (vi) Failure to install stormwater BMPs or erosion and sediment controls;
 - (vii) Stormwater BMPs or erosion and sediment controls improperly installed or maintained;
 - (viii) Operational deficiencies;
 - (ix) Failure to conduct required inspections;
 - (x) Incomplete, improper, or missed inspections; and
 - (xi) Discharges not in compliance with the requirements of Section 9VAC25-880-70 of the general permit.
 - (2) The Administrator may issue a summons for collection of the civil penalty and the action may be prosecuted in the appropriate court.
 - (3) In imposing a civil penalty pursuant to this subsection, the court may consider the degree of harm caused by the violation and also the economic benefit to the violator from noncompliance.

- (4) Any civil penalties assessed by a court as a result of a summons issued by the county shall be paid into the treasury of the county to be used for the purpose of minimizing, preventing, managing, or mitigating pollution of the waters of the county and abating environmental pollution therein in such manner as the court may, by order, direct.
- (e) Notwithstanding any other civil or equitable remedy provided by this section or by law, any person who willfully or negligently violates any provision of this chapter, any order of the Administrator, any condition of a permit, or any order of a court shall, be guilty of a misdemeanor punishable by confinement in jail for not more than 12 months or a fine of not less than \$2,500 nor more than \$32,500, or both.

ARTICLE IV. FEES AND SURETY

Sec. 23.3-30. Fees Chapter

- (a) Fees to cover costs associated with implementation of a VSMP related to land disturbing activities and issuance of general permit coverage and VSMP authority permits shall be imposed in accordance with Table 1. When a site or sites has been purchased for development within a previously permitted common plan of development or sale, the Applicant shall be subject to fees ("total fee to be paid by applicant" column) in accordance with the disturbed acreage of their site or sites according to Table 1.
- (b) Fees to cover the costs associated with erosion and sediment control (E & SC) plan review and inspection shall be imposed in accordance with requirements of the VESCP authority and section 10-13 of the Code.

Table 1: Fees for permit issuance

Fee type	Total fee to be paid by Applicant (includes both VSMP authority and Department portions where applicable)	Department portion of "total fee to be paid by Applicant" (based on 28% of total fee paid*)
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre) and single family lots with disturbance up to 5 Acres	\$290	\$0
General/Stormwater Management - Small Construction Activity/Land Clearing non- residential (Areas within common plans of development or sale with land disturbance acreage less than 1 acre.)	\$290	\$81
General/Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 acre and less than 5 Acres) excludes single family lot.	\$2,700	\$756
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$3,400	\$952
General/Stormwater Management – Large Construction	\$4,500	\$1,260

Activity/Land Clearing [Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres]		
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$6,100	\$1,708
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$9,600	\$2,688

* If the project is completely administered by the Department such as may be the case for a state or federal project or projects covered by individual permits, the entire applicant fee shall be paid to the Department.

- (c) Fees for the modification or transfer of registration statements from the general permit issued by the State Board shall be imposed in accordance with Table 2. If the general permit modifications result in changes to stormwater management plans that require additional review by the county, such reviews shall be subject to the fees set out in Table 2. The fee assessed shall be based on the total disturbed acreage of the site. In addition to the general permit modification fee, modifications resulting in an increase in total disturbed acreage shall pay the difference in the initial permit fee paid and the permit fee that would have applied for the total disturbed acreage in Table 1.

Table 2: Fees for the modification or transfer of registration statements for the General Permit for Discharges of Stormwater from Construction Activities

Type of Permit	Fee Amount
General/Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$20
General/Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 1 and less than 5 acres)	\$200
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$250
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$300
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$450
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 100 acres)	\$700

- (d) The following annual permit maintenance shall be imposed in accordance with Table 3, including fees imposed on expired permits that have been administratively continued. With respect to the general permit, these fees shall apply until the permit coverage is terminated.

Table 3: Permit Maintenance Fees

Type of Permit	Fee Amount
Chesapeake Bay Preservation Act Land-Disturbing Activity (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than 1 acre)	\$50
General/Stormwater Management – Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land disturbance acreage less than 1 acre)	\$50
General/Stormwater Management – Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance equal to or greater than 1 acre and less than 5 acres)	\$400
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 5 acres and less than 10 acres)	\$500
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$650
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$900
General/Stormwater Management – Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land disturbance acreage equal to or greater 100 acres)	\$1,400

General permit coverage maintenance fees shall be paid annually to the county, by the anniversary date of general permit coverage. No permit will be reissued or automatically continued without payment of the required fee. General permit coverage maintenance fees shall be applied until a Notice of Termination is effective.

(e) The fees set forth in Subsections (a) through (d) above, shall apply to:

- (1) All persons seeking coverage under the general permit.
- (2) All permittees who request modifications to or transfers of their existing registration statement for coverage under a general permit.
- (3) Persons whose coverage under the general permit has been revoked shall apply to the Department for an Individual Permit for Discharges of Stormwater from Construction Activities.
- (4) Permit and permit coverage maintenance fees outlined under Section 23.3-30(d) may apply to each general permit holder.

(f) No general permit application fees will be assessed to:

- (1) Permit modifications at the request of the permittee resulting in changes to stormwater management plans that require additional review by the Administrator shall not be exempt pursuant to this Section.
- (2) Permittees whose general permits are modified or amended at the initiative of the

Department, excluding errors in the registration statement identified by the Administrator or errors related to the acreage of the site.

- (g) All incomplete payments will be deemed as nonpayments, and the applicant shall be notified of any incomplete payments. Interest may be charged for late payments at the underpayment rate set forth in §58.1-15 of the Code of Virginia and is calculated on a monthly basis at the applicable periodic rate. A 10% late payment fee shall be charged to any delinquent (over 90 days past due) account. The county shall be entitled to all remedies available under the Code of Virginia in collecting any past due amount.

Sec. 23.3-31. Performance Bond

Prior to issuance of any permit, the Applicant shall be required to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the county attorney, to ensure that measures could be taken by the county at the Applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate actions which may be required of him by the permit conditions as a result of his land disturbing activity. If the county takes such action upon such failure by the Applicant, the county may collect from the Applicant for the difference should the amount of the reasonable cost of such action exceed the amount of the security held, if any. Within 60 days of the completion of the requirements of the permit conditions, such bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the Applicant or terminated.